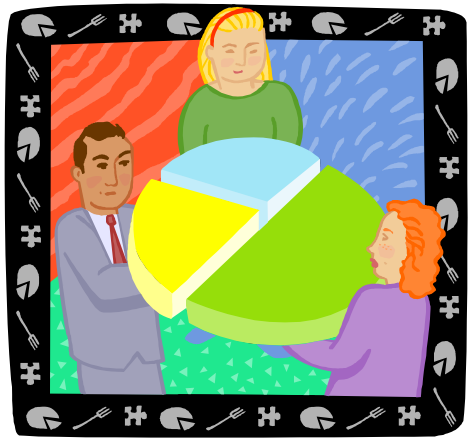
AFFIRMATIVE EMPLOYMENT PROGRAM (AEP)



EEOC is mandated to enforce laws ensuring EEO for all

Goal of laws -ensure that all Americans are judged on their ability to do the job and not on personal characteristics

14th Amendment to the Constitution promised that all Americans have a right to equal protection under the Law

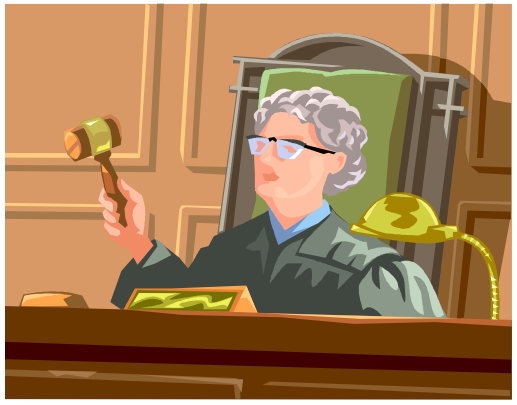
Through Title 29, CFR Part 1614, Congress acknowledged that, for certain Americans, historic

REGULATORY GUIDANCE

- Section 717, Title VII of the Civil Rights Act of 1964
- EEOC Management Directive 715, 1 October 2003
- Section 501 of the Rehabilitation Act of 1973

- **Extent of permissible affirmative action is strictly limited under the law. <u>Only</u> <u>lawful</u> when:**

- **Designed to respond to demonstrated imbalance in the workforce**
- **Is flexible**
- **Time-limited**
- **Applied only to qualified individuals**
- **Respects rights of non-minorities**
- **Not a quota system**



RELEVANT Agency CASE LAW

Adarand v. Pena

- The Supreme Court held the use of race based affirmative action measures by the federal government requires strict scrutiny and not a constitutional bar; two elements of strict scrutiny include compelling governmental interests and narrow tailoring

- Agencies may voluntarily use race in employment actions if there is a ‘gross statistical disparity’

- Ensure use of numerical goals are not converted into rigid requirements (quotas). Goals establish only a numerical objective to be attained through an agency’s best efforts; quotas require selection of a specific number of minorities without regard to qualification, availability, or application rates

RELEVANT Agency CASE LAW

Johnson v. Transportation Agency

- Decision to hire was made pursuant to an Agency plan that directed that sex or race be taken into account for the purpose of remedying under representation

- Plan set aside no specific number of positions for minorities or women, but required short range goals be established and adjusted annually

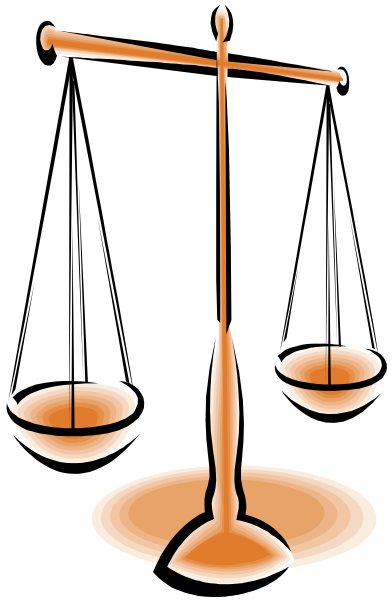
- Court held that the Agency appropriately took into account appellant's sex as one factor in making hiring decision because the plan represented a moderate, flexible, individualized approach to affecting a gradual improvement in the representation of minorities and women in the workforce

Elements of an AEP Program

Workforce Program

Discrimination Complaints

Recruitment and Hiring



Employee Development Programs

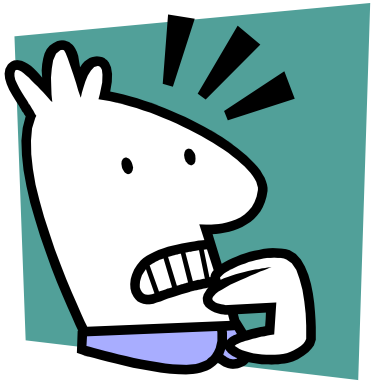
Promotions

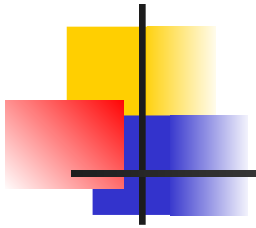
Separations

Program Evaluations

B A R R I E R S

- Lack of Support from Leadership
- Organizational Placement of EEO
- Complaint Focused Program
- Inadequate Resources
- Lack of Accountability





Affirmative Employment = Plan
How are we going to achieve diversity?

Commitment from TOP management

EEO Officers need access and credibility

Recommendations of EEO must be taken seriously

Keep EEO “in the loop”

AEP IS OPPORTUNITY – NOT MANDATORY SELECTION

- Affirmative employment is about efforts to make possible equitable representation in the organization at all grade levels and not preferential hiring

- Based on goals and are not guaranteed

- Provides opportunity to look at policies, practices, and procedures to ensure fairness and not just policies for selected individuals

NOT about QUOTAS	IS about PEOPLE
Concerns access	Developing people
Addresses inclusion qualified	Competent, applicants
Equal Opportunity	Organizational Values
Tapping into diverse People applicant sources	Retaining
Reaching Out People	Compensating
Program Ownership	Fair Apprais
Promoting Diversity	Involving

OUR JOB!!

- Efficient and effective use of automated tools
- Include all employees in analysis, to include disabled
- Ensure performance indicators are measurable
- Conduct impact analysis during downsizing